IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

FIRST APPEAL NO. 263 OF 2002

Rama Subhash Naik,
of major age, Occupation agriculture,
residing at Kasaile Usgao,
Post office Usgao, Goa,
Represented herein by his son
and duly constituted Attorney
Shri Subhash Rama Naik .... Appellant

Versus

Communidade of Usgao,
Near Adinath Temple,
Panchawada, Usgao, Goa
through its Attorney
Shri Tulsidas N. Prabhu .... Respondent

Shri S.N. Joshi, Advocate for the Appellant.

Shri V.P. Thali, Advocate for the Respondent.

CORAM : **P.V. KAKADE, J**.

DATE : **21st September, 2006**

ORAL JUDGMENT

The appellant has preferred this appeal against the order passed by the District Judge, Panaji dated 5/10/2001, rejecting the reference under Section 30 of the Land Acquisition Act.

2. By notification issued under Section 4 of the Land Acquisition Act dated 20/07/1992, the Government acquired the property belonging to the Communidade of Usgao for the purpose of construction of four rooms with compound wall for Government Primary School at Kasaile, Usgao, Ponda, Goa. The Land Acquisition Officer awarded an amount of Rs. 33,921/- on account of the said acquisition of the land. By an application dated 22/12/1993 filed before the Land Acquisition Officer, the applicant claimed that he was a tenant in respect of the acquired land and prayed that the compensation should be paid to him. As the dispute was raised by the appellant claiming to be deemed owner of the acquired land, the Land Acquisition Officer referred the dispute to the District Court for the apportionment of the compensation awarded as contemplated under Section 30 of the Land Acquisition Act. The respondent did not appear before the Court and the matter proceeded ex-parte against the respondent.

3. It was the case of the present appellant that he was declared as a tenant of the impugned property admeasuring 3,450 sq. mts., forming part of the property surveyed under No. 223 sub division 1 of Village Usgaon, including the acquired property. The Mamlatdar also ordered that the name of the applicant be recorded as a tenant of the acquired property

and accordingly entry came to be made and, therefore, for all practical purposes appellant was hold to be a tenant of the impugned property, so far as record of rights are concerned. In the course of the adjudication of the reference, the present respondent did not appear. Inspite of that the appellant brought to the notice of the learned District Judge that he was declared to be a tenant in the suit property. The learned District Judge was of the view that the Mamlatdar was not justified in declaring the applicant as a tenant, without there being any evidence before him. The learned District Judge has further observed that he was aware of the fact that his Court has no powers to test the legality of the Judgment passed by the Mamlatdar. However, it was further observed that the Court could not be silent spectator to the illegalities committed by the Mamlatdar.

4. In my considered view, the learned District Judge exceeded his jurisdiction in making this observation, especially predetermining the issue that the judgment of Mamlatdar is illegal or else without giving any opportunity to the concerned revenue authority to justify the said order. Moreover, it was not a forum to adjudicate over the order passed by the Mamlatdar. It is needless to mention that when the District Judge was aware of the fact that he has no jurisdiction nor any power to test the

legality of the judgment passed by the Mamlatdar, such observations were totally unfair. In view of this position, without further elaborations, I am inclined to hold that it is a fit case for remand. The learned District Judge would be well advised to give notice to both the sides to decide the issue afresh within the four corners of his jurisdiction which is limited to Section 30 of the Land Acquisition Act.

5. Hence the appeal is allowed. The order passed by the District Judge, Panaji dated 5/10/2001 is hereby quashed and set aside. The matter is remanded to District Judge, Panaji for adjudication afresh taking into consideration the observations made herein above. District Judge is directed to adjudicate the dispute as contemplated under Section 30 of the Land Acquisition Act within a period of 6 months from the date of receipt of the writ of this Court. With these directions, appeal stands disposed of with no order as to costs.

P. V. KAKADE, J.

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